



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 13, 1992

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
Institutional Division
P. O. Box 99
Huntsville, Texas 77342-0099

OR92-344

Dear Mr. Peck:

On May 15, 1992, we received your request for an open records decision pursuant to section 7 of the Open Records Act, V.T.C.S. art. 6252-17a. This request was with regard to certain records sought by Mr Earl Caskey. Your request was assigned ID# 16034.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 7(a) to submit that request to the attorney general within ten days of the governmental body's receipt of the request for information. The time limitation found in section 7 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time prescribed by section 7(a), a heightened presumption of openness arises which can only be overcome by a compelling demonstration that the information should not be made public. *Id.*

However, we realize that the short time-frame prescribed by section 7(a) may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request. On May 18, 1992, we asked you for copies of the requested documents and an explanation for why the documents were-excepted from required

public disclosure. You now seek an extension to the deadline that we established for a response.

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Without the information we requested of you, your request for an open records decision remains incomplete. Nor have you demonstrated why an extension of the established deadline is necessary in this particular instance. Accordingly, your request for an extension is denied and we find that you have not met your burden under section 7 of the act in a timely manner.

Consequently, this office cannot consider your claims with regard to sections 3(a)(7), 3(a)(8), and 3(a)(11). Should you at some future date request that this matter be reopened and reconsidered, we will not consider your request timely, and will consider these discretionary exceptions to required public disclosure as waived, unless you can demonstrate compelling reasons why the information should not be released. *Hancock*, 797 S.W.2d 379. This office also lacks the necessary information to evaluate your claims under section 3(a)(1).

Accordingly, we are closing the file without a finding. The person requesting the information in your custody may pursue such remedies as may be appropriate. See, e.g., V.T.C.S., art. 6252-17a, § 8. While we cannot direct you to disclose information that is confidential under the law, neither can we provide you with an opinion upon which you can rely as an affirmative defense to prosecution under section 10(c)(1) of the Open Records Act. If you have any questions regarding this matter, please refer to OR92-344.

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee

WW/RWP/lmm

Ref.: ID# 16034
ID# 16195

cc: Mr. E. Earl Caskey
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